REPORT ON THE COURT SYSTEM

LOS ANGELES COUNTY

SUMMARY

REPORT BY THE TASK FORCE ON COURTS

LOS ANGELES COUNTY

ECONOMY AND EFFICIENCY COMMISSION

October, 1981

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THE COURT SYSTEM IN LOS ANGELES COUNTY

SUMMARY OF RECOMMENDATIONS

INTRODUCTION

In March, 1981, the Board of Supervisors directed our commission to undertake an analysis of court congestion and delay. In accordance with our usual practice, we appointed a task force to establish project objectives, direct the work and formulate recommendations. The task force is composed principally of people from business and the other professions. Two of us are active lawyers, and one more has legal credentials. The Honorable Christian E. Markey, Jr., in his capacity as Chairman of the Bench and Bar Council, has served on our task force.

When we undertook this study of the courts, many authorities advised us that we were wasting our time -- that nothing can be done, that resistance to change in the legal community is insurmountable, that it is unlikely that we or any group could understand the system and identify achievable goals for its improvement. We disagree.

When the electorate adopted Proposition 13 in 1978, one of its central messages was crystal clear: government, if forced to act, can improve the efficiency and reduce the costs of its operations. According to public opinion surveys before and after Proposition 13, the public does not want to eliminate public services and will not reduce the demand for those services. It has simply imposed economies by reducing the amounts of money available from taxes. From our perspective, then, the courts are facing the same difficulties as the rest of government; increasing demands in a period of declining resources.

Congestion of the court system means this: the system has insufficient resources to produce the work required of it according to standards of performance acceptable to those demanding the work. Increased response time, delay, and other service reductions are the consequences of that situation. In the absence of realistic means to increase system resources, that is saving money or increasing revenues, we can anticipate a breakdown of the system. According to legal professionals, signs and symptoms of breakdown are already appearing, since some civil suits in the Superior Court are facing the five year dismissal deadline and backlogs continue to increase.

As a lay group, we sought to accept the public agenda to improve system efficiency and reduce taxpayers' costs. We asked central questions: what are realistic means to increase court system resources in a period of declining tax revenues? What are short-term local improvement programs on which the Board of Supervisors and the Judiciary of the County can collaborate? What elements in a joint legislative program have potential for relieving congestion? What long-term strategies have the highest potential for meeting future operating needs of the system? What additional technical legal modifications do we commend to the bench and bar for further analysis and debate?

In the following, the task force summarizes its recommendations on the court system. We define the court system and present an estimate of its costs. We discuss the need for change and the obstacles to change in the context of system congestion. We present fifteen recommendations for local or legislative action, and we propose a feasible, short-term program for immediate action and implementation by the Board of Supervisors and Judiciary of Los Angeles County. Our full report contains a more detailed presentation of our reasoning.

THE CURRENT SITUATION

The Court System and Its Costs

We include in the court system in Los Angeles County the Judiciary of the Superior Court and Municipal Courts, the Executive Officer of the Superior Court, the County Clerk, Clerks and Administrative Officers of the Municipal Courts, the Marshal, and court support activities of the Sheriff's Department. We exclude such other elements of the "justice system" as the District Attorney, the Public Defender, the various City Attorneys, police departments, bar association and the bar.

The court system employs a workforce of approximately 4300. We estimate the total annual cost of the system, including all overhead and mandatory expenses, at $231 Million.

The court system obtains revenue from two sources in addition to taxes: 1) fines, forfeitures or penalties, and 2) fees for service. In 1980-81, the County collected approximately $123 Million from these sources. However, statutes dictate the distribution of these funds among cities and the county as well as among such specific functions as road maintenance, library services, and support of the Judges' retirement system. We estimate County retained revenue, available for court system financing, at $37 Million.

The Need for Change

Congestion in the trial courts is not new and is not limited to California and Los Angeles. In the 1950's Chief Justice Earl Warren cited its correction as a major social goal. Nor is it new to identify feasible strategies for system improvement. In 1959, the American Bar Association published a ten-point program for improvement. Although some of

the details differ now because of technological and administrative advances, the fundamentals of the ten points are still current. More recently, Chief Justice Warren E. Burger has called for similar improvements.

What is new is the urgency. No matter how good the case for approaching congestion by adding resources to the system -- more judges, more support personnel, more facilities to house them, and more money to pay for all this -- the taxpayers have rejected it.

Demands on the court system, as measured by such indicators as the number of cases filed and the number of active lawyers in the community, have increased more rapidly than or at the same rate as resources. Over the past decade, aggregate system caseloads have increased by 11% and the number of active lawyers by 129%, while cost in constant dollars increased 11%, staff size increased 6% and non-tax revenue, in constant dollars, declined 24%. The increases of system resources between 1971 and 1981 have not been sufficient to keep up with demand or with inflation.

In each year over the decade, the number of new cases filed exceeded the number of cases decided. Aggregate annual system filings increased 13%, from 2.5 million cases to 2.8 million cases; aggregate annual system dispositions increased 6%, from 2.1 million cases to 2.2 million cases.

The difference between cases filed and cases decided in each year is the number of cases retained in the system for later disposition. Most of the pressure falls on those cases -- and the litigants bringing them to court -- which current social policy has determined can afford to wait. The Constitution, statutes, and practical considerations dictate that certain cases cannot be deferred: criminal, juvenile, family law, and probate cases. Therefore, the pressure falls principally on civil

litigants, primarily in the Superior Court. In the Superior Court, the number of cases awaiting trial at the end of the year increased 70% from 47,000 in 1970 to 80,000 in 1980. For civil cases awaiting trial, the waiting time more than doubled from approximately 20 months to nearly 50.

If we cannot find ways to accommodate civil litigants without deferring attention to their disputes for ever-increasing periods, then we face a degradation of justice in our society. Our communities may become less litigious, but that does not mean that the disputes leading to litigation will vanish. It means that people will find other ways to resolve disputes. We prefer a litigious society, where individuals seek resolution of their disputes under law in the courts, to a society which is alienated and frustrated by inability to find non-violent means of dispute resolution. Consequently, change of the system is necessary to provide for the increasing caseloads presented to it.

Approach to Change

Congestion means the same for the court system as it does for transportation and other systems. When the number of vehicles entering a highway increases beyond its capacity, the result is an increase in the amount of time it takes to use the highway. As the time interval increases, highway users begin to judge it as congested. They seek alternatives to reduce the time of travel between points. Treatments include two approaches. The first is increasing system capacity by widening roads, building new roads, or replacing the system with new forms of transportation. The second is reducing demands on the system by reducing the number of vehicles entering the network. The issue

is not whether or not to introduce changes. Rather, the issues are which of the basic alternatives to implement and how to accomplish them so that congestion declines at a price the community can afford. Otherwise, traffic eventually stops.

Similarly, resolving congestion in the court system requires a commitment to one or more of three basic objectives and investment in one or more of three basic means to meet the objectives.

Effectively meeting any one of the three basic objectives would reduce congestion. They are:

- Reduce the caseload entering the system;
- Speed up the flow of cases;
- Increase or reallocate system resources.

To meet any of these three objectives, it will be necessary to invest in (pay the price of) interfering with one or more of the three underlying social political forces governing its use and its behavior. They are:

- Administration and Structure;
- Incentives and Disincentives;
- Legal Processes and Procedures.

Obstacles to Change

Politicians and other professionals have worked hard over the past several decades to assemble sizable inventories of court improvement proposals. A few have been implemented. Most have not. Our task force recognizes the following as practical limitations on the feasibility and effectiveness of the changes we propose:

- complexity of implementation;
- fragmentation of effects;
- traditions of the legal system;
- law regulating local government operations.

Complexity of Implementation. No single individual or governing body in Los Angeles County has authority to change the court system or any of its parts. In order to implement effective change, depending on the specific proposal, it is necessary to obtain the consistent, coordinated, and timely action of the following: 1) the Legislature and the Governor, 2) the Supreme Court and Judicial Council, 3) the County Board of Supervisors, 4) the Presiding Judge of the Superior Court, 5) the Municipal Municipal Court Judges' Association, and 6) the Sheriff.

In addition, some of the changes viewed by court professionals as the most promising in terms of their effects on congestion would require direct public intervention to amend the Constitution or County Charter. Increasing the interest rates paid on judgments, limiting the size of juries, or reorganizing the court system would require such amendments.

Finally, effective change would require the cooperation of police agencies and the legal community, including District Attorneys, Public Defenders, and Probation Officers, as well as attorneys in private practice. Although they have no role in implementing court system change, they have a significant influence on the demands placed on the system as well as on the processes and procedures that govern use of system resources. They have substantial influence with the public and with legislative bodies, and they are organized in powerful associations which have a record of successfully exerting that influence.

Fragmentation of Effects. Many in the large inventory of court improvement proposals would affect at most one type of case or one component of the system. When such proposals are evaluated in the

context of system-wide congestion, their effects seem minimal. For example, criminal cases account for 7% of the demand and 25% of judicial time consumed in Superior Court; non-traffic criminal cases account for 50% of the time consumed in Municipal Courts. Realistic, significant reduction of 20% in the cost or improvement in the productivity of criminal processes -- by far the largest demand on the system -- would reduce aggregate demand by at most 10%.

The same kind of perspective is necessary when considering the sources of system cost and potential savings. For example, much of the controversy over court system resources focuses on the Judiciary -- the number of judges, their salaries and benefits, and their professional responsibilities. The Judiciary in Los Angeles County, however, represents at most ten percent of the system's workforce and cost.

Traditions of the Legal System. One fundamental assumption of our social system is that the bloodless path to justice under law requires the preservation of an adversary system. When court improvements are proposed, legal professionals tend to disagree vigorously on 1) the objectives of the proposal, 2) the potential utility of the proposal in meeting its objectives, 3) the price of the change, and 4) who will pay the price.

Central to this obstacle to change is the perception in the legal community of a necessary tension between efficiency of performance and justice. Regardless of the proposed improvement, the first question is "How will this affect the balances of just rights, processes and outcomes?" rather than, "How will this reduce cost or relieve congestion?" Professionals are less likely to agree on what is just than on what might be efficient; the consequence is little agreement on the basic objectives

of proposed changes among those whose collaboration is essential for their effectiveness.

Law Regulating Local Government. In our commission's work, we hear much about "mandates". Usually the word means that the County must perform some function because a State law requires it. Those mandates, however, are the least of the problem of the courts. One of the major obstacles to change in the post-Proposition 13 era is that County government is frequently prevented from taking action because it is not explicitly permitted by State law; a second is that the County often must seek legislative authorization to make such administrative changes as contracting with private firms, introducing new courtroom technology, or changing the price charged for service, because it cannot delegate functions of public officials.

These obstacles are quite real. No proposal is feasible without the collaboration of the bench and bar professionals who will be affected; no proposal of the bench and bar is feasible without the collaboration of the legislative and administrative officials of County government who finance the system. We are convinced that the obstacles can be overcome.

RECOMMENDATIONS

Therefore, we focus on those system improvements which we believe the County, Judiciary, and Board of Supervisors can implement jointly, in a spirit of collaborative problem solving. They are real improvements: we estimate that savings or revenue increases over $5 Million will result from the effective implementation of those subject to quantification. In addition, we recommend longer-range actions for further discussion and analysis by the bench and bar and local officials. In those cases too, however, we suggest an analytical approach fostering collaboration on meeting goals rather than widening of ideological and interest group divisions. The problems of local government -- and the courts -- in this period are too serious to permit the inaction that results from such divisions. We believe that all of the energies in local government should be focused on feasible, practical approaches to court congestion which will save money, raise revenue or improve control and efficiency.

Recommended Local Program

Four of our recommendations are designed for immediate adoption and implementation, over the next year, by the Board of Supervisors and the courts. These recommendations form the core of the improvements program. Inability or unwillingness to collaborate on these will demonstrate, once and for all, that change is in fact impossible and system collapse inevitable.

Recommendation 1. The task force recommends that the Board of Supervisors dissolve the Blue Ribbon Committee on Courts and assign its function to the Judicial Procedures Commission.

Discussion. In 1980, on recommendation of Supervisor Ward, the Board of Supervisors established a Blue Ribbon Committee on Courts and appointed a chairman. The function of this committee was not stated clearly in the Board directive, but it was understood as a court-watching project to monitor the utilization of judges' time.

Since 1961, the Board has appointed a Commission on Judicial Procedures to monitor operations of the court system and recommend improvements in judicial administration. The Blue Ribbon Committee, regardless of how constituted, is a clear duplication of effort. Moreover, the actions and demeanor of those promoting the Blue Ribbon Committee will increase, rather than relieve, animus between the Board and the courts. The Board needs a consistent, responsible source of information and analysis to assist it in determining what court system improvements are needed and how to implement them. The Judicial Procedures Commission, which the Board appoints, is that source.

> *Recommendation 2. The task force recommends that the Judiciary and the Board of Supervisors collaborate in implementing, throughout the court system, the program, performance, and cost accounting modules of the County's Financial Information and Resources Management System (FIRM).*

Discussion. One of the principal difficulties in justifying and implementing proposed court improvements is establishing the impact of the proposed changes on costs. Comprehensive cost information is simply not available by type of case, source of cost, or function performed. The absence of such information is also one of the difficulties experienced by the County Judiciary in debating resources issues before the Judicial Council and the Legislature. Without it, for example, it is difficult to show precisely how much it costs the public to file, index, retrieve,

report and decide on motions, continuances, and other judicial procedures.

The County's system (FIRM) can accommodate flexible definitions of programs and cost centers which cross departmental lines. It can account fully for the cost of services provided by one internal organization for the benefit of another.

For its most effective use, in planning and controlling resources, the system relies on time reporting. The Presiding Judges, the college of judges and the administrative officers can define, as a matter of implementation, which costs are of the most significant for system improvement. Therefore, we believe that they should determine the schedule of implementation among the five departments and 24 districts of the court system and among the various groups of employees in its workforce of 4300.

As is true of any information system, FIRM cannot accomplish improvements by virtue of its implementation. The improvement lies in the uses of the information by those responsible for managing operations. When fully implemented throughout the court system by the Presiding Judges, FIRM can be used to diagnose high demand areas for the entire court system rather than just the Judiciary. The point of our recommendation is that the court system can and should collaborate with the Board to use the County system, FIRM, provided the information generated is controlled and used by the courts for management purposes.

Recommendation 3. The task force recommends that the Board of Supervisors and the Judiciary collaborate on promoting a new legislative policy of user financing of the civil cases. First, we recommend immediate steps to require full cost fees for service for jury panels and for court reporting. Second, we recommend that the system of fees for service be changed to 1) specify proportionality of fees to the costs they finance, and 2) require full cost recovery in cases where those demanding a service have a choice of lower-cost alternatives.

Discussion. In the case of courts and many other essential public entities, some argue, not unreasonably, that the service should be free to all -- that is, entirely tax financed. Others claim that civil trials benefit only the litigants and should be wholly financed by the litigants. The reality is, tax financing is on the decline during a period when the demand on courts is increasing and the courts are short of resources. What is needed is an enlightened new approach designed to use fees to control the incentives driving up demand for service without materially reducing access to the court system.

When we refer to fees for service, we exclude revenues from fines and forfeitures. We believe that the current system of fines should be left intact, and that it not be viewed as a primary means of increasing court system revenue. What we are recommending is three changes of the structure of fees for services to civil litigants and their lawyers.

First, court statistics show that certain demands, while granted as a matter of right, are extraordinary. The demand for jury trial is one of those. Litigants pay for the twelve jurors actually chosen to decide a case, but not for the panel of 30-40 jurors from whom the twelve are chosen. We recommend charges for full panels. This would raise on the order of $600,000 at current juror rates.

Currently reporters' salaries and benefits amount to $174 per day; we estimate fully burdened costs at $230 per day. The taxpayer subsidizes reporter services. A new policy should incorporate full cost recovery in this case.

Second, fees should bear a consistent relationship to costs which takes inflation and local conditions into account. The $13 included in the filing fee for court reporters does not cover costs and has not kept up with inflation. Charging litigants the full cost of court reporter services as needed, rather than as a share of the filing fee, could increase litigants' and attorneys' incentives to support audio-visual or computer-assisted alternatives when appropriate. The full cost policy which we recommend in this instance, would raise $1.9 Million at current costs.

The task force does not recommend that 100% of the full cost of civil litigation be financed by fees. However, we propose that the Legislature replace the current system of fixed fees with a policy which establishes the relationship of fees to total system costs. At present, fixed fees support approximately 15% of the total cost of civil litigation. We are proposing that the Legislature fix the percentage of cost to be financed by fees - whether at 15% or at 50% or 85% would be the issue for legislative determination.

Finally, we recommend that the Legislature replace fixed fees for service with full cost recovery in those instances when a private sector alternative exists.

Private sector alternatives are available to the Sheriff and Marshal as servers of process in civil cases. While the statutes permit fees for service, they also fix a maximum price which is substantially lower than the public cost. Consequently, the government is subsidizing a public entity competing with private firms. We propose changing the statutes to require full cost recovery. That will have the effect of increasing revenues by approximately $2 Million, if lawyers continue to use the public service, or reducing costs by a like amount if the

business goes to the private service companies.

Recommendation 4. The task force recommends that the Board of Supervisors, the Task Force on Security, and the courts incorporate contracting in security plans where judged feasible by the courts.

Discussion. Contracting for security services, to the extent that the performance of contractors can meet court requirements, represents an opportunity to save money. Our task force has not determined whether or not or to what extent the Presiding Judges and other managers can effectively substitute contracting for the present system; the evaluation of cost-risk factors is their responsibility. We do not suggest contracting for Sheriff or Marshal services. Where contracting is determined feasible, it can save 30%-40% of Mechanical Department costs. Where it is determined infeasible, it merely represents another lost opportunity for saving money and releasing resources for use elsewhere in the system.

In August, 1981, the Board of Supervisors established a task force to design and recommend court security systems. Considering the present financial condition of the County and the needs of the courts for resources, that task force should seriously consider contracting in its design.

This concludes our presentation of the program we recommend to the Board and Judiciary for immediate action. Three of the four recommendations can be implemented locally through Board-Courts collaboration. One - on fees for service - requires a jointly sponsored legislative program. The four recommendations are:

- dissolution of the Blue Ribbon Committee;
- implementation of cost accounting using FIRM;
- new legislation on fees for service, specifically for jury panels and court reporters;
- contracting for court security where judged feasible by the courts.

We turn now to a discussion of those recommendations we suggest the Board refer to the bench and bar and administrative agencies for further review and analysis.

Administration and Structure

Recommendation 5. The task force recommends increased data processing support of clerical functions of the court system and continued evaluation of opportunities to contract with private firms for the performance of information management functions.

Discussion. The court system performs as much an information management function as an adjudication function. Numerous civil cases - some say more than 50% of those filed - receive no judicial review whatever. Nevertheless, their filing imposes a demand on the system.

In Los Angeles, the courts use substantial data processing support. In the late 1960's, the Los Angeles courts received international recognition for innovations in the effective and practical use of this technology. More recently, the County is developing automated docket systems supporting the Municipal Courtsand has implemented automatic traffic records systems to increase collection revenues. Some courtrooms have terminals, microfilm and microfische which are used extensively, and the people managing the court system are well disposed to increasing the application of such devices.

We believe that a new systems development effort is warranted in the department of the County Clerk. Increased staffing in that department over the past decade has been allocated to new courtrooms rather than to filing, storage, and retrieval operations. According to authorities we interviewed, including department customers, the principal effect of stress in the department is a three - to fivefold increase in the elapsed time between the presentation of a document and its formal entry in the system

for later use and reference. One reason may be that certain documents must go through multiple stages of review and handling - for certification, forms control, coding, copying and so forth. The principal reason for deferring investment in new systems has been the County's financial crisis. Therefore, we propose that the bench, bar, and administrative officials determine the need for and potential financing of new systems.

Contracting with private firms may also offer significant potential for relieving stress in this department. The County Clerk is analyzing the feasibility of contracting for such functions as microfilming, data entry, and the maintenance of the records center. Other contracting options - for retrieval, certification or duplication of documents - present technical legal problems because of the mandate that the County Clerk maintain custody and supervision of all civil case records. We propose that the bench and bar and administrative agencies determine whether there are some responsible ways to use contracting for those activities in order to relieve pressure on the information management functions of the court system.

Recommendation 6. The task force recommends that 1) the Board of Supervisors explicitly recognize and support action by the Presiding Judge of the Superior Court to reduce backlog, and 2) the Board and the court collaborate to design and evaluate experiments in branch courts to test the effectiveness of alternative intervention strategies.

Discussion. According to some of the research and field experience in court system administration, the Superior Court can intervene at the local level to expedite the processing of civil cases and reduce backlog. The specifics of proposed intervention strategies differ. All of them, however, take advantage of one of the central characteristics of civil cases: 97% of such cases settle before trial or are decided

at uncontested trials.

We have reviewed three approaches to backlog elimination. The first is a case management program developed by the National Center for State Courts. In this system, the court establishes and enforces case processing standards in the form of maximum permissible elapsed time between major events. The system has been successful in reducing backlog in Maricopa County.

The second is the backlog elimination program developed by Judge Reginald M. Watt of Butte County. Its central feature is setting active civil cases for trial in excess of available courts. It requires support of the Presiding and Supervising Judges, a settlement program, firm no-continuance policies, and monitoring to ensure long-term effectiveness. The system has been successful in reducing backlog in several California counties.

The third intervention strategy has been implemented in the Central District by Presiding Judge David N. Eagleson. It features early status conferencing to determine whether a case has settled or is appropriate for arbitration, specialized settlement panels of judges, supervised trial setting conferences and controlled discovery, court-managed trial scheduling, and stacking of cases in courts nearing readiness for a new trial. The program has been recently implemented and results on its effectiveness are not yet available.

Our task force has reviewed the various proposals. The findings are backed by responsible empirical research over a broad variety of courts and by practical implementation experience in several California courts. We therefore conclude that the courts are making strong efforts to improve the efficiency of case management. We believe that the Board

of Supervisors should explicitly recognize those efforts and support them at every opportunity.

We also propose that the bench and bar and administrative agencies develop experiments to test the comparative effectiveness of the three programs. Such an experiment, including the case management approach and the backlog elimination approach in selected branch courts, would generate empirical information on the advantages and disadvantages of each. This information would permit development of an optimal local strategy for reducing backlog.

> *Recommendation 7. The task force recommends that the Board of Supervisors and the Superior Court establish as policy 1) per-case rather than per-day compensation of arbitrators, 2) support of legislation to index the jurisdiction of the court to require arbitration (now $15,000) and the compensation of arbitrators (now $150) to inflation; the task force further recommends that the Superior Court establish as policy the enforcement of statutory sanctions on litigants requiring trials de novo after arbitration when arbitration is chosen by election or stipulation.*

Discussion. The arbitration program represents a cost-effective means of adjudicating disputes at less cost than a full court, with minimum risk to justice. Its objective is to divert cases to a less expensive, more rapid track than trial. As we explained above, even massive reductions of court workload, when limited to one or two classes of cases, are not likely to have measurable effects on congestion defined in terms of aggregate system caseload. In assessing the arbitration program, then, it is important to keep its effects in perspective.

We reviewed local information on the arbitration program and discussed it with judges, attorneys, administrators and arbitrators. All of the information substantiates our conclusion that the arbitration program has significant but partially realized potential for relieving

court congestion. These sources, and some of the information in the recent Rand report, suggest that the three adjustments to the program we recommend might improve its effectiveness and utility.

First, as an alternative path in the system, arbitration is as much subject to congestion as other paths. Those we interviewed anticipate difficulty with maintaining a sufficient supply of arbitrators because the compensation, $150 per day, is below market rates. We propose increasing the pay to $150 per case as authorized in the law in order to attract arbitrators and in order to provide an incentive to hear more than one case per day.

Second, the law establishing the program until 1978 does not take inflation into account. The caseload affected by mandatory assignment to arbitration will decline as litigants adjust their demands, because of inflation, above the fixed $15,000 limit. The fixed limit of $150 on arbitrators' compensation will lose value, thus restricting the supply of arbitrators. We propose replacing these fixed dollar amounts with an amount indexed to inflation.

Third, the law permits the court to impose sanctions on litigants who reject an arbitrator's decision and try the case de novo. Arbitrators' fees, expert witness fees, and statutory court costs may be charged against the side demanding trial de novo if that side does not improve its position from the arbitrator's decision. The court's authority does not extend to attorney's fees or to the full cost of the trial. According to our information, the courts are not presently using this authority.

Such sanctions are important as a means of discouraging trials de novo, thus improving the chances that the arbitration program

will result in real savings rather than become just another pre-trial phase of case processing.

We believe that the key issue in the use of sanctions, when the party insisting on trial fails to improve the verdict, is whether arbitration was chosen by the parties or imposed by the court. We hesitate to recommend use of sanctions when arbitration is imposed by the court. We see no reason, however, to provide any litigant with two sequential opportunities at public cost. Therefore, we propose that the court use its statutory authority to impose sanctions in cases where trial de novo follows elective or stipulated arbitration and the party requesting trial does not improve on the arbitrator's award.

> *Recommendation 8. The task force recommends that the Superior Court and the Board of Supervisors 1) establish a policy of support and encouragement of the use of the private adjudication process as authorized by law, and 2) propose to the State that the authorization for the system be revised to require payment by the parties of any additional appeals or trial costs they generate in the public system.*

Discussion. The law permits litigants to submit cases for adjudication to a retired judge qualified to decide the case. The private judge supplies a court decision, subject as others to appeal, which is financed by the litigants. The case generates a minimal demand on the public system, consisting of an order referring it to the private judge.

The use of private judges saves money by taking cases out of the publicly financed system. It also has major advantages of access and speed for litigants who can afford to pay for the judge's services at rates of $500-$750 per day.

The public policy issues are complex and have recently generated considerable controversy. First, critics claim that widespread use would be inequitable, since those able to pay for private adjudication have access to speedy decisions while those who cannot afford a private judge wait for years for attention from the public system. Second, private adjudication permits litigants to enter the appeals process, at public cost, more rapidly than others who wait for public trials. The third criticism is that the private adjudication process generates public costs as the policies and mechanics governing its use are challenged.

In our view, private adjudication will produce a public benefit by relieving congestion and reducing costs. By taking complex cases out of the public system, private adjudication should relieve pressure on the disposition of personal injury, probate and family cases - then improving performance for those seeking relief in the public system. However, it would be reasonable to require litigants who obtain expedited justice by paying for it to also pay the full cost of work they generate in the public systems of appeal. Otherwise, litigants will have the choice of avoiding delay in the trial courts, but the taxpayers will have no choice in financing the correction of errors that may occur during the trial process. Those using the private adjudication system for trials do so by reason of affluence or economic advantage; they should therefore also pay for any additional work they generate.

Recommendation 9. The task force recommends that the Board of Supervisors and the Judiciary seek legislation which would index State subsidy support 1) to a fixed proportion of total court system costs, and 2) to the full incremental costs attributable to any new law affecting the courts (Judicial Impact Statements).

Discussion. The State provides a substantial portion of court systems' costs. Since Proposition 13, the State has augmented general County funds with bailout money from surplus or from revenues generated on the State tax base. In addition, the State pays all but $9,500 of each Superior Court Judge's $59,600 salary, makes the employer's contribution to the retirement fund, pays arbitrator's fees, and subsidizes other direct costs. Finally, the State now provides a direct subsidy of $60,000 per judicial position to assist the County in paying for the support of additional judges.

In considering responses to Proposition 13, the Post Commission and others recommended that the State assume full financial responsibility for the court system. Although we would not oppose this recommendation, we do not view it as a priority for bench and bar attention. State government is no more affluent than County government, and it is more remote politically from the communities to be served. Moreover, shifting costs among alternative tax bases was not, in our view, one of the major ideas behind public support of Proposition 13.

The present subsidy system is deficient, we believe, in two respects, both caused by the State's reliance on fixed dollar formulas. First, the impact of fixed dollar amounts declines as costs increase with inflation. Support falls to inadequate levels. Second, the fixed dollar formula bears no relationship to fluctuations of workload that may be caused, in part, by changes of State law. The level of support should be increased to a share of total system cost ($231 Million) and indexed so that the State's share remains a constant proportion of costs net of fee revenue. Since many of the new laws adopted by the State have major impact on the court system workload, we think that the subsidy

should also take the impact of new legislation into account.

> *Recommendation 10. The task force recommends that the Board of Supervisors and the Judiciary put top priority on 1) short-term strategies to correct backlog and reduce costs, and 2) the development of local initiatives to achieve functional consolidation of court functions.*

Discussion. Much of the energy committed by bench, bar, and government officials to court system improvements has been spent on political restructuring of system components - consolidation of Sheriff and Marshal services since the mid-1950's, consolidation of all Municipal Court Districts, unification of the Superior Court and Municipal Courts into a single trial court of general jurisdiction. Legislation to implement these, like many radical reforms, tends to be consistently defeated because of the action of interest groups who view them as adverse to their interests.

Our task force has not agreed on a recommended position on current unification proposals or consolidation proposals. While we neither oppose nor support jurisdictional or district consolidation, our tendency is to prefer proposals to achieve functional consolidation, where feasible, to both. More important, we would prefer that the political and analytical energies of the various parties to change be focused on more pragmatic and demonstrably effective ways to address the severe problems of backlog and fiscal insufficiency experienced in the court system. Even when executives in business see the need for reorganization, they are likely to correct severe short-term problems before reorganizing. The reason is, the energy consumed by the reorganization, the uncertainties it creates, and the complexities of its implementation may cause enough inattention to current problems to permit bankruptcy before the process is complete. Local administrative initiatives, such as those of the

Presiding Judges Association of the Municipal Courts, for example, are the most feasible and therefore effective approaches to improving resource allocation and achieving scale economies.

Incentives and Disincentives

In this section, we turn to another family of alternatives -- those designed to reduce demand on the system by manipulating the economic incentives and disincentives of litigants and their attorneys. The proposals we have considered apply primarily to civil cases filed in the Superior Court.

Our task force believes that an understanding of the issues is crucial to a reasonable and effective County policy -- Board and Judiciary -- on court improvement. The County is a major litigator as well as financier of the court system and component of its management. Should the County support or oppose proposals designed to reduce court costs when they entail the risk of increased litigation costs? In the absence of sound cost trade-off information, the County and other public agencies have consistently opposed many proposed changes of the incentives system.

The most important consideration in the public sector today, including in the courts, is cost. As a method of reducing the public costs of congestion and delay, the manipulation of litigants' financial incentives in tort or contract cases might have a major effect. Such cases consume 38% of total court resources, measured by judicial time spent on their disposition, of which 12% is personal injury and 26% other civil complaints. Therefore, a 10% improvement, in the number filed or in the time consumed deciding them, could save $3 Million -- enough to finance seven civil courtrooms. We emphasize, however, that

manipulation of incentives would affect not only cost, but also justice in our society.

> *Recommendation 11. The task force has no consensus on prejudgment interest, no-fault insurance, and contingency fee limitation. The task force recommends that the Board of Supervisors and the Judiciary urge passage of legislation increasing interest rates to 10% and support a constitutional amendment replacing the interest ceiling with bank rates.*

Discussion. When a jury or court decides a claim where the money required for satisfaction is computable, it may include interest earned on that amount from the time of the claim to the judgment. The court has no authority to include interest earned on personal injury awards until after the amount is established by a judge or jury -- that is, until after the judgment. In any case, the interest on judgments may not exceed 10%, and is now set at 7%.

This creates an incentive for anyone defending a claim for money to defer judgment and payment for as long as possible, provided the risk is high that payment will be required and provided the costs of deferral (e.g., legal costs) do not exceed earnings on the funds retained. With the elapsed time between the claim and judgment in the neighborhood of five years for cases going to trial, and market interest rates in the neighborhood of 15%, retained earnings on the original claim are enough to finance the eventual payment.

Those who believe such incentives are a major reason for delay propose that the law be changed to require prejudgment interest. Opponents of prejudgment interest claim that congestion would be relieved, instead, by taking cases out of the system. They propose no-fault insurance and limitation of the contingency fees charged by lawyers representing plaintiffs in injury suits.

We have found no compelling empirical evidence that the theories underlying these proposals are a sound basis for action to reduce congestion and delay. Our conclusion is, they raise questions of justice, to be decided on the merits by the Legislature, rather than issues of court system congestion.

On the other hand, the constitutional limit of 10% on the interest on judgments and the statutory limit of 7% clearly violate free-market principles and provide indefensible anti-competitive advantages to debtors. Therefore, we propose that the rates be corrected to market levels.

Recommendation 12. The task force recommends that the Board and Judiciary actively support the development and financing of neighborhood justice centers, based on cost-benefit assessment of their effectiveness in reducing court congestion.

Discussion. The caseload in the Superior Court and Municipal Courts would decline if people would go elsewhere with their disputes. We have already described arbitration and private adjudication as court-managed means of diverting caseload as it enters the system. The Small Claims Court of Municipal Courts is another successful means of achieving the same end.

We favor approaches to case diversion which make alternatives widely available to permit satisfactory dispute resolution at less expense than settlement or trial processes. In particular, we think that the establishment and expansion of grant-financed mediation, conciliation, and negotiated settlement programs should be encouraged. Community based, non-court alternatives are available from the Neighborhood Justice Center in Venice sponsored by the Los Angeles County Bar Association, from such legal services organizations as Bet Tzedek in the Fairfax area

of Los Angeles, and from other bar-sponsored "modest means" programs. Programs of this kind have been supported by Chief Justice Warren E. Burger, Governor Brown, and such local organizations as the Judicial Procedures Commission.

There is some evidence, inconclusive, that such programs effectively divert cases from the courts. Recently, courts and public agencies have begun to refer cases to mediation in such centers rather than retain them in the courts. We believe, therefore, that these programs have an unrealized potential for relieving court congestion by making such alternatives as mediation and conciliation available.

We agree with critics of mediation that it is not appropriate or practical in all cases. Nevertheless, in some cases, the economic incentives should favor broader utilization. A creditor, for example, is more likely to collect a debt on a mediated schedule than on a judgment which is subject to default. Therefore, we propose that bench, bar and public officials support these programs and find ways to increase their utility as a caseload diversion option.

Legal Procedures

One of the central functions of the court system is to provide a process which protects the rights of parties to a dispute and permits each to advocate a cause without fear that opponents have unfair advantages in the system. Regardless of what may be proposed to improve the efficiency of the court system, it can be implemented only if the parties to change -- judges, lawyers, legislators -- are convinced that it will have little or no impact on the major attributes of the process.

Certain changes designed to improve court system efficiency clearly fall in a class where the risk is high of radically changing the

process: limiting the right to counsel or the right to jury trial and regulating the behavior of lawyers by limiting continuances or enforcing sanctions. In other cases, the risk to the process is not clear, but the effects on legal process are a matter for contention inhibiting decisive and quick action by the Legislature or the courts: introducing new courtroom technology, or relaxing the jurisdictional boundaries between Superior and Municipal Courts.

Our group consists primarily of non-legal professionals. As laypeople, we hesitate to claim evidence that any of these programs will work in the long run. We support their continued development. We propose increased experimentation at the County level, and recommend that the Legislature remove obstacles to local implementation.

Recommendation 13. The task force recommends that the Board of Supervisors and the Judiciary place top priority on obtaining legislation permitting increases of courtroom technology applications.

Discussion. One of the absurdities of the post-Proposition 13 era in California is that the local agencies bearing the cost and pressure of revenue reductions have no authority to improve technology, even when they are the public bargaining agent with the unions involved and even when the impact is likely to be minimal. The prohibition of electronic court reporting is an example. According to a 1971 report by a committee of the Superior Court, initial application of electronic reporting would be limited to 5% of the courts.

We understand that there may be some difficulty in universal application of any technology, and that savings are not assured in all cases. That is not the point. The obstacle to development of these options is not the concerns of lawyers and judges. The obstacle is

legislative paralysis in the face of union and interest group opposition. Our point is that technology applications in court reporting represent an opportunity for saving money. Local officials - not the State - should be responsible for them and the consequences of their use. Therefore, laws preventing local action should be repealed and authority granted to negotiate the details locally with affected unions.

Recommendation 14. The task force recommends that the Board of Supervisors and the Judiciary continue seeking approval of methods of reducing costs and delay by reducing jury size.

The right to a jury trial in civil cases is guaranteed in the United States Constitution. Nonetheless, it is described in every inventory of court improvement proposals as a major source of unnecessary cost which is to be avoided or reduced at every opportunity. Needless to say, proposals to abolish juries or limit their size in civil cases are highly controversial.

We believe that an appropriate approach to this question should hinge on public policy debate over quantified risk. The United States Supreme Court has recognized the validity of six-member juries in criminal cases. Policymakers can decide on risk in advance: that is, establish how probable the potential conviction of an innocent person should be relative to the potential acquittal of a guilty person. Based on this data, the optimal jury size can be computed to minimize risk. The methods are not universally acclaimed. They do, however, bring the issues into a practical focus which can be analyzed by the Legislature in terms of the costs and benefits of alternatives.

We do not claim to have a definitive answer on questions of jury size. We anticipate the results of experiments in the Municipal

Courts. We are convinced, nevertheless, that electing small juries, where authorized, may be a feasible way to reduce costs without increasing the risk of unjust verdicts in civil trials. We are impressed that the issues of the debate are subject to quantification. We propose that bench, bar and public officials continue efforts to evaluate current experiments and propose additional reform.

> *Recommendation 15. The task force recommends that the Board of Supervisors and the Judiciary continue to evaluate and support the Economical Litigation Project, the El-Cajon Project, and the alternatives for probate reform.*

Discussion. The Economic Litigation Project is an experiment implemented in Los Angeles and Fresno to simplify procedures. The project is designed to reduce the private costs of litigation for cases valued at $25,000 or less. It is in effect until 1982 in the Superior Courts and Municipal Courts. The project limits the behavior of litigants and attorneys in preparing and trying their causes. It limits pretrial motions and discovery and requires simplified pleadings. From what we have learned, the project has considerable promise for reducing delay as well as public and private costs. It is not without its critics, particularly because discovery steps are eliminated. The task force has deferred judgment on the program and its potential cost savings. We believe that its effects should be compared to such alternative programs with similar or overlapping jurisdiction as the arbitration program in Superior Court and the Small Claims programs in Municipal Courts.

The El Cajon Project is an experiment which permits the Judiciary of Municipal Courts to retain felony cases for sentencing, on a guilty plea, rather than transfer them to Superior Court. The

program appears to have substantial potential for improving system resources management by eliminating duplicative case procedures at both courts.

Probate reform is a highly technical and specialized area. In April, 1981, the Board of Supervisors instructed the Public Administrator to recommend improvements of probate processing. While the directive was intended for County-administered estates, we believe that the expertise of the Public Administrator and County Counsel should be brought to bear on developing a County position on this aspect of court congestion. We are particularly interested in the potential of two proposals: change of the legal fee structure, and adoption of the Uniform Probate Code

Conclusion

The task force has concluded its review of congestion in the court system in Los Angeles. We have focused on achievable goals for system improvement. We are convinced that the key to effective change is collaboration in its implementation by affected parties, particularly the Board of Supervisors and the Judiciary. We have recommended a four-point local program to improve control and increase revenues. The four steps can be implemented immediately by the Board and the courts. We have recommended eleven additional steps for analysis and action by the bench, bar, legislators, and other public officials.

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